Where a testator makes an absolute gift with the understanding that the donee shall transfer the property received to a third party, the donee will be made to hold as trustee for that third party. *Hoge* v. *Hoge*, 1 Watts (Pa.) 163. These trusts are imposed on the ground that it would be fraud for the donee to take absolutely, knowing that he is only meant to take for another's benefit. See *Matter of O'Hara*, 95 N. Y. 403, 413. If there is actual communication of the testator's wishes to the donee, the courts hold that his silence amounts to a consent to a trust. See *Trustees of Amherst College* v. *Ritch*, 151 N. Y. 282, 324, 45 N. E. 876, 887. More accurately, he is bound whether he consents or not. But to impose a trust some connection previous to the testator's death must be established between the donee to be charged and the testator's intentions. *Wallgrave* v. *Tebbs*, 2 Kay & J. 313; *Schultz's Appeal*, 80 Pa. St. 396. In the principal case this must rest entirely upon the relation of the solicitor to the trust company. Moreover, it is somewhat difficult to work out an intent of the testatrix to impose a trust, in the absence of which there could be no trust. *Lomax* v. *Ripley*, 3 Smale & G. 48.

WATERS AND WATERCOURSES — SURFACE WATERS — RIGHT TO FACILITATE DRAINAGE. — A valley draining the surface water in boggy soil ran through two adjoining farms. The owner of the upper farm constructed a system of drains in his part of the valley which temporarily increased the amount of water discharged upon the lower farm, but did not divert the direction of flow. *Held*, that the lower owner is not entitled to an injunction. *Perry* v. *Clark*, 132 N. W. 388 (Neb.).

The civil-law rule that the lower estate must receive the natural flow of surface water obtains in many jurisdictions. *Pinkstaff* v. *Steffy*, 216 Ill. 406, 75 N. E. 163. See *Central of Georgia Ry. Co.* v. *Keyton*, 148 Ala. 675, 41 So. 918, 921. Under this rule, diversion or unnatural increase of the flow is actionable. *Rhoads* v. *Davidheiser*, 133 Pa. St. 226, 19 Atl. 400. *Cf. Livingston* v. *McDonald*, 21 Ia. 160. But it has been expressly held that this does not apply where the change results from improvements in city lots. *Hall* v. *Rising*, 141 Ala. 431, 37 So. 586. See *Los Angeles Cemetery Association* v. *City of Los Angeles*, 103 Cal. 461, 467, 37 Pac. 375, 377. But see *Garland* v. *Aurin*, 103 Tenn. 555, 561, 53 S. W. 940, 941. And there is a tendency to subordinate the rule to the interest of good husbandry by allowing reasonable changes in the drainage. *Fenton & Thompson R. Co.* v. *Adams*, 221 Ill. 201, 77 N. E. 531. Other jurisdictions accept the common-law doctrine that surface water is a common enemy, against which anyone may defend himself. *Walker* v. *New Mexico & Southern Pacific R. Co.*, 165 U. S. 593; *Cass* v. *Dicks*, 14 Wash. 75, 44 Pac. 113. This is the rule in the jurisdiction of the principal case. *Morrissey* v. *Chicago, Burlington & Quincy R. Co.*, 38 Neb. 406, 56 N. W. 946. This right usually affords ample protection against interference with the flow, and no action is allowed therefor. *Gannon* v. *Hargadon*, 10 All. (Mass.) 106; *Manteufel* v. *Wetzel*, 133 Wis. 619, 114 N. W. 91. Some jurisdictions qualify this right by allowing an action where the interference is unnecessary or negligent. *Brown* v. *Winona & Southwestern R. Co.*, 53 Minn. 259, 55 N. W. 123. See *Aldritt* v. *Fleischauer*, 74 Neb. 66, 70, 103 N. W. 1084, 1085. Since in the principal case the drains were beneficial, and there was no diversion, and the increase was only temporary, the decision is clearly right.